## BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

RODNEY DINGMAN Claimant	<b>)</b>
VS.	) ) ) Docket No. 196,023
COMMERCIAL MECHANICAL, INC. Respondent	) Docket No. 190,023
AND	
TRANSPORTATION INSURANCE COMPANY Insurance Carrier	

## <u>ORDER</u>

Respondent appeals a February 9, 1995 Preliminary Order granting claimant's request for medical treatment.

## ISSUES

The issues raised on appeal are:

- (1) Whether claimant met with personal injury by accident on the date alleged:
- (2) Whether claimant's alleged injury arose out of and in the course of his employment; and
- (3) Whether claimant made timely notice of the alleged injury.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties the Appeals Board finds:

- (1) The issues raised by respondent are issues subject to review on appeal from a preliminary order. K.S.A 44-534a.
- (2) The Appeals Board finds that claimant has failed to establish that he suffered accidental injury arising out of and in the course of his employment and the Order by the Administrative Law Judge is, therefore, reversed.

The evidence establishes that claimant was injured in an automobile accident on June 15, 1994. Claimant does not contend this injury was compensable but alleges that he was subsequently injured again on August 23, 1994 while moving heavy items at work. The Appeals Board finds this testimony unpersuasive in the face of numerous medical records for treatment after the August 23, 1994 date showing that claimant has related his injury to the automobile accident. Not until late November 1994 did claimant relate his injuries to work activities. Claimant testified that he may have mislead the treating physicians because he did not want to cause trouble. This testimony also lacks persuasive weight in light of his other testimony, denied by his supervisor, that he had already told his supervisor of the accident before these entries in the medical records. The claimant's testimony is also undermined by evidence that he had reported previous work-related injuries within a day of the injury.

**WHEREFORE**, the Appeals Board finds that the Preliminary Order entered by Administrative Law Judge John D. Clark on February 9, 1995, should be, and the same is hereby, reversed.

D	Dated this day of	May, 1995.	
		BOARD MEMBER	
		BOARD MEMBER	
		BOARD MEMBER	

 Dennis Phelps, Wichita, KS
 D. Steven Marsh, Wichita, KS
 John D. Clark, Administrative Law Judge George Gomez, Director

IT IS SO ORDERED